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Layman's Criticism of the Lawyer

ADDRESS

DELIVERED BEFORE THE

AMERICAN BAR ASSOCIATION

AT THE ANNUAL MEETING HELD IN
WASHINGTON, D. C., ON OCTOBER 20, 1914

BY

ELIHU ROOT
UNITED STATES SENATOR
FROM NEW YORK

PRESENTED BY MR. STERLING

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In the Senate of the United States,
October 22, 1914.

Ordered, That the address delivered October 20, 1914, before the American Bar Association, at Washington, D. C., by Senator Elihu Root be printed as a public document.

Attest:

James M. Baker, *Secretary.*

THE LAYMAN'S CRITICISM OF THE LAWYER.

Address by Elihu Root before the American Bar Association at the annual meeting in Washington October 20, 1914.

GENTLEMEN OF THE BAR: There is food for thought in the colloquy on Blackheath:

DICK THE BUTCHER. The first thing we do, let's kill all the lawyers.
JACK CADE. Nay, that I mean to do. Is not this a lamentable thing, that of the skin of an innocent lamb should be made parchment—that parchment, being scribbled o'er, should undo a man?

To these simple rustics, who had real grievances, the lawyer and his proceedings seemed a barrier in the way to that happy day when there should be in England seven halfpenny loaves sold for a penny and the three-hooped pot should have ten hoops. That plain unlettered men should have this feeling in England, when the justice to be administered was the King's justice and the law to be enforced was the King's law, may not have made so much difference, but the existence of such a feeling in America, where the justice and the law are established, maintained, and enforced only by the authority of the very people among whom the feeling is found, is of very great importance.

Doubtless such a feeling does exict. We lawyers are quite apt to feel about our law and procedure very much as Lord Coke did when he declared the common law to be the perfection of reason. But if we were to poll the great public outside of the profession I fear that we should find an uncomfortable number who, in a mild way, agree with Dick the Butcher. We hear many casual complaints made by intelligent persons, based sometimes upon experience and sometimes upon observation. They say the law is slow and dilatory; that it takes forever to reach a conclusion; that redress of wrong is often attained, if at all, too late to be of any use; that when criminals are finally brought to justice the punishment is too far removed in time from the crime to have just punitive effect. They say the law is enormously expensive; that whether a suitor succeeds or is defeated he is likely to be ruined either way by the multiplication of counsel fees and costs and expenses and loss of time and interference with business; that the client has no means of measuring or weighing or estimating proper compensation for the services rendered to him, so that fees are vague and indeterminate and the man of moderate means has no way of counting the cost before he goes into litigation; that the law is so arranged as to require, even in simple matters, an enormous and disproportionate amount of labor which has to be paid for; that everybody's lawyers do a multitude of things for which there seems to be no occasion and for which the client has to pay.

They say the law is doubtful and uncertain; that with all the thousands of statutes professing to make it clear and all the tens of thousands of decisions by hundreds of courts declaring it and applying it, nobody seems to know what it is; that its administration is a lottery and depends upon the last guess; that the chances of injustice succeeding and of the criminal escaping are so great that judgment has little terror for the wrongdoer: that it has become so voluminous and complicated as to be beyond the comprehension of plain men, and no one knows how to conduct his affairs in such a way as to be sure not to violate it or to protect himself under it. The remark "This may be law, but it is not justice," sometimes heard, indicates a sense that the rules of law which profess to secure justice in general too often prevent justice in the particular case and themselves point out the way in which the adroit and unscrupulous may conform to the law and avoid being fair and honest. There is an idea that success in litigation depends not so much upon being right as upon being able to get the best lawyer, so that the ordinary honest man of moderate means has little chance against a very rich man or corporation, who can be indifferent to expense, or against the rogue who can secure the most subtle and adroit attorneys and counsel. There is a very general feeling on the part of many who think they have a grievance to be redressed or an unjust charge to refute that if they could only tell their story immediately to somebody who was impartial and just they would get satisfaction: but that the courts and lawyers, for some reason or other, will not permit them to do this and insist upon involving them in long, expensive, and ruinous proceedings.

For all these things lawyers are blamed, and this is very natural because at the bar, on the bench, in State legislatures, and in Congress, and as experts in influencing the opinions of the communities in which they live, lawyers have the greatest opportunity and consequent responsibility to prevent abuses and improve the administration of the law.

Not all these things are true. Some of them have a basis of truth but are overdrawn. Some of them are to a degree merely a statement of the conditions which are inherent in juridical controversy. The swift, inexpensive, certain, and just attainment of a result according to one litigant's ideas is quite likely to collide with the equally swift, inexpensive, certain, and just process by which another litigant expects to reach an entirely different conclusion in the same case; and some degree of delay, expense, and uncertainty and of injustice, according to the views of one litigant or the other, necessarily ensues.

As a rule both litigants go into court, each seeing only his own side of the case and therefore finding it quite simple; each is confident of an easy victory, and has the same attitude toward the controversy as the people who, at the beginning of a war, cry "On to Richmond," "On to Paris," "On to Berlin," and are surprised when the journey is retarded. The natural tendency under such circumstances is to criticize the conduct of the war.

Criticisms regarding the conduct of litigation having such an origin probably cover the greater part of the field of complaint. They do not, however, sink very deep in the public mind. There is a strain of practical good sense in the American layman which

leads him to discount very heavily the expressions of litigants who have not had their own way, and there is abundant evidence that, under all the noisy fault finding, the American people do respect and trust the American bar. They may well do so, for the bar is worthy of their respect and confidence. We may challenge all records past and contemporaneous to show in the preservation of order, the security of property, the protection of individual liberty, and the maintenance of the fundamental ideas of a system of jurisprudence, a degree of general efficiency higher than that we have attained in the United States through the service of the American bench and the American bar. Their standards of probity and honor are high. The occasional derelictions, which are inevitable among imperfect men, always come as a surprise and a shock to the community in which they occur. The independence and courage of the American lawyer befit the man who passes his life, not in suing for favors but in asserting and maintaining rights. He does not cringe before power. He does not fear the face of man. He knows no superior. The fearless frankness of his utterances in behalf of his client are so much a matter of course among our fortunate people that they pass without notice; but if we study the annals of those countries in which the bench and bar tremble under fear of political power we shall begin to realize how much America owes to the independence and courage of her bar. Above all else the American lawyer has loyalty—loyalty to his client's cause. That cause is his, and to it his learning, experience, industry, and skill are devoted ungrudgingly. Some of our chief faults are but the defects of this noble and attractive virtue.

If we go behind the surface of faultfinding and study the conduct of our people, we find a real attitude of respect and confidence. For every detractor we find a thousand men and women who trust their lawyers implicitly in their most intimate and vital affairs with the frankness and confidence of personal friendship, and who are justified in their trust. Above the men of all other callings, it is to the lawyers that the Americal people turn with the burdens and the responsibilities of political office. It is the members of the bar who chiefly are trusted to carry on the most important business the people have—their free self-government.

Nevertheless, I think we must concede that there is room for improvement in the administration of the law in this country. Abuses exist in widely differing degrees in different communities. As a rule they are much worse in the more populous and wealthy communities, where life and affairs are more complicated; but every American community, as it moves along in its course of prosperous development, is passing into a condition in which the same abuses will naturally develop. Every part of the country, moreover, is coming to be more intimately interested in the administration of law in every other part.

We are fast developing one comprehensive American judicial system and one American bar. It is worth while for all of us, from whatever States, to give serious consideration to these complaints about the administration of justice, from whatever quarter they come. We are all so much alike that a serious abuse in one jurisdiction is pretty sure to indicate tendencies to be guarded against elsewhere.

So far as complaints are wrong we should make a distinct and conscious effort to show the public that they are wrong, and, so far as they are well founded, we should fix the responsibility and try to have the cause removed. In both cases this is very important to the profession and to the interests which its members guard. It is more important to each one of us than any case in which we can be engaged, because the interests of every client we protect, the welfare of our profession, the enterprise and prosperity of the country, depend upon public respect for law and a general belief and confidence that justice can be obtained through our courts; that life and liberty and property are sure of protection. It would be very injurious to have established a popular habit of decrying and condemning and stigmatizing our administration of justice and the agents through whom justice is administered. That would tend to weaken the whole system through the withdrawal of public confidence. Wherever people are wrong in their criticisms, that ought to be shown; and wherever they are right, the conditions ought to be remedied.

The profession of the law can fix its attention upon this subject only by a conscious effort. Lawyers are essentially conservative. They do not take kindly to change. They are not naturally reformers. Their time is occupied mainly in thinking and arguing about what the law of the particular case is; about what the facts of the case are. The most successful lawyers are, as a rule, continually engrossed in their own cases, and they have little time and little respect for the speculative and hypothetical. The lawyers who have authority as leaders of opinion are men, as a rule, who have succeeded in their profession, and men naturally tend to be satisfied with the conditions under which they are succeeding. This is very well illustrated by some of the experience of this association. For years the association has been endeavoring through the activity of very able and assiduous committees to secure some quite simple reforms tending to simplify the procedure of the Federal courts. There has not been very much success. As time passes a little progress is made. The measures which the committees of the association have advocated have got a little farther each year, and they will ultimately arrive, but at every stage they have been blocked by opposition from lawyers. This has always come from lawyers who had succeeded and were content with things as they were, who did not want practice and proceedings changed from that with which they were familiar, and who never had acquired the habit of responding to any public opinion of the bar of the United States. If the administration of justice in the United States is to improve rather than to deteriorate, there must be such a public opinion of the bar, and it must create standards of thought and of conduct which have their origin not in the interest of particular cases, but in the broader considerations of those relations which the profession of the law bears to the administration of justice as a whole. Not merely the fee and the triumph in the particular case, but the honor and dignity and service of the American bar and the American courts must be motives of thought and action among the members of our profession.

What can the bar do to improve the administration of justice in the United States? First, we can improve our lawmaking. We make too many laws. According to a count made in the Library of

Congress, our National and State legislatures passed 62,014 statutes during the five years from 1909 to 1913, inclusive. During the same five years 65,379 decisions of the National and State courts of last resort were reported in 630 volumes. Of these statutes 2,013 were passed by the National Congress, and of these decisions 1,061 were rendered by the Supreme Court of the United States. Many of these statutes are drawn inartificially, carelessly, ignorantly. Their terms are so vague, uncertain, doubtful, that they breed litigation inevitably. They are thrust into the body of existing laws without anybody taking the pains to ascertain what the existing laws are, what decisions the courts have made in applying and interpreting them, or what the resultant of forces will be when the old laws and the new are brought together. They are made without the true basis for general legislation in the customs and needs of the community to be affected. Laws affecting the conduct of life and affairs of the people ought not to be passed, because it happens to occur to some one that it would be a good thing to make a change. They ought to grow out of a generally recognized public need for the change, ascertained not by a process of reasoning but by experience. A new law is not justified merely because somebody sees an evil or inconvenience and thinks that he has a way to reform it, or because a system works badly and some one thinks another system would work better. Laws made in that way bring new inconveniences and new evils and have to be abandoned or continually changed. Changes in the substantive law ought to be subject to long continued inquiry and discussion. They ought to be tested by the practical knowledge of the people who will be most affected by them and are most familiar with the subjects to which they relate. Everyone familiar with legislation who has seen a proposed statute subjected to that kind of process knows that it often results either in ascertaining that the proposed law is inadvisable or in very great changes of its provisions.

It frequently happens that when a law has been passed in that way one can look back to the original measure, whose authors had been clamoring for immediate enactment, and see that as originally framed is was all wrong and would have been most impracticable or injurious. Yet thousands of laws are passed in the United States every year without being submitted to any such test. We are coming very much into the habit of this kind of a priori legislation, passing laws which somebody has conceived or reasoned out because they seem all right theoretically. There is a very prevalent idea that the people who would be most deeply affected by a law are disqualified as witnesses regarding its wisdom, practicability, and effect because of their interest. If they see that a law affecting them is proposed and undertake to say what they think about it they are accused of lobbying and warned off the premises. Yet when all the different groups of people who will be affected by particular laws are put together they constitute the American people, and if laws are to be made without hearing them we shall have a body of statutes based upon theory and not upon practical knowledge of affairs. All this mass of ill-considered, badly drawn, experimental, first-impression legislation with which the country is flooded from year to year causes innumerable litigations which clog the calendars of the courts, occupy the time of judges, and delay the disposition of other litigation. It

creates new questions faster than the courts can decide old ones. It causes ignorance and uncertainty regarding the law, which is continually changing; and the multitude of new laws is one of the chief reasons for the multitude of reported decisions.

One of the most learned and able pure lawyers in all the history of the American bar was Charles F. Southmayd, of the famous firm of Evarts, Southmayd & Choate. He retired from practice and took up his residence in Stockbrodge, Mass., and while living there he illustrated the effect which this new turmoil of legislation produced upon an old-fashioned lawyer by employing an agent to attend the sessions of the Massachusetts Legislature every winter and to report to him immediately upon their passage all new laws creating offenses or imposing penalties—"man traps," he used to call them—in order that he might regulate his conduct in such a way as to keep out of jail.

Undoubtedly there is much reason in these later days for new legislation. Our social and industrial conditions are changing very rapidly. New relations, new rights, new obligations, are being created for the regulation of which the old laws and customs of the country are inadequate, and there must be new law to prevent injustice. Nevertheless there is no real need or justification for a large part of the laws that are made or for the way in which they are made.

There is another most unwise kind of legislation which is one of the chief causes of uncertainty in our law and of the excessive litigation which so burdens the courts. That is the modern practice of perverting State constitutions from their proper office to establish the framework of government and declare the principles upon which it shall be conducted, and of expanding so-called constitutions into general statutes crowded with particular and detailed provisions, many of them new, experimental, and the proper subject for treatment by ordinary legislative bodies. With this kind of provision go a multitude of specific limitations upon legislative powers. These limitations give rise to a multitude of questions as to the constitutionality of legislative acts. They can receive effect, of course, only through the judgment of courts as to the conformity of legislative action to their requirements. Both of these kinds of constitutional provision arise from distrust of legislatures, which goes far beyond any criticism of the courts or of the bar; but in this way there is created a condition of things in which the courts and the bar can not possibly escape criticism for defects in the administration of law which are not of their own making. Such a basis for the conduct of popular government ought not to be accepted as final.

Sometime we shall realize that salvation does not come by statute; that prompt and effective administration of justice must rest upon stability and certainty of the law; that overlegislation defeats its own purpose by the uncertainty and confusion and ineffectiveness which ensue; and that the proper function of the legislator is not to command or compel the people whom he serves, but is, on the one hand, to record the matured opinions and sense of justice of the community, and, on the other, to make these effective by the needful adaptation of the machinery of government.

Of course all this is not a matter to be dealt with by lawyers at the bar. Courts can not apply the remedy nor can lawyers as officers of

the courts. But lawyers probably make up the majority of every legislative body in the United States, and moreover the opinions of lawyers in their own communities on such a subject as this will have a great effect in forming the public opinion which controls legislatures.

There are certain specific measures by which American legislation may be greatly improved. One is the establishment of a reference library for the use of each legislative body, with a competent library force to furnish promptly to the legislators statistics, historical data, and information of all kinds pertinent to proposed measures. Another is the establishment of a drafting bureau or employment of expert counsel, subject to be called upon by the legislature and its committees, to put in proper form measures which are desired, so that they will be drawn with reference to previous legislation and existing decisions of the courts; so that they will not duplicate existing statutes, will not be inconsistent with existing statutes, will not ignore the decisions of the courts, will not undertake to do anything in one way which is already done in another, and will be written in good English, brief, simple, clear, and free from ambiguity and inconsistency. There is a useless lawsuit in every useless word of a statute, and every loose, sloppy phrase plays the part of the typhoid carrier. A good many American legislatures have already established reference libraries, and some have established drafting bureaus to the great advantage of their legislation. The State of Wisconsin has taken a very creditable leadership in that direction. This is the same kind of method which is followed in the British House of Commons, where there are regular counsel employed by the Government to draft measures. It is manifest that a large part of our legislators must be without the thorough knowledge of the whole field of law and the training in clear and accurate expression which ought to be employed in the phrasing of every new statute. If ever expert assistance was needed, the conditions of legislation in the United States at the present time show that our legislators need it in their lawmaking.

One of the reasons why our legislation is so badly done is that this craze for making new laws upon every conceivable subject overburdens our legislative bodies and they have not the time to do their work properly. Laws are not properly considered in Congress or in our State legislatures because everybody is always busy about other laws, and, instead of a moderate output of legislation well considered and well done, we have an enormous output of ill-considered legislation ill done. The remedy for this cause of the evil is to cultivate public opinion in favor of moderation and against haste and excess in lawmaking. Public commendation of the one and public condemnation of the other would soon bring about an improvement.

Another thing the bar can do is to simplify the procedure of our courts. There is a very great difference in this respect in the States. Taking the country as a whole, judicial proceedings tend to become more complicated and technical. In some parts of the country, notably in my own State of New York, this tendency has already reached a point of serious abuse. The tendency is one which has existed in every system of jurisprudence from the Egyptians down. The special class to which is committed the guardianship of the law

always drifts away in time from the standards of the plain people whom they serve, always becomes subtle, technical, overrefined, and the forms which they originally adopted to facilitate the process of getting at substantial justice come to be themselves the subject of controversy which obstructs the way of justice.

The administration of law in America had become very technical 70 years ago, although the conditions of life and business with which the courts and the bar had to deal were comparatively simple. The rules which governed the pleadings and proceedings of the common law both in civil and criminal cases were originally founded upon reason and adapted to the conditions out of which they arose. They were designed to protect rights and to facilitate the attainment of justice, but they had hardened into an iron-bound system, which had ceased to fit the rapidly developing and changing life of American communities. People who were accustomed to simple and direct methods in their business grew tired of waiting and paying for lawyers to dispute over answers and pleas and rejoinders and rebutters and surrebutters, and tired of seeing criminals escape justice because the caption of an indictment was defective or a venire was informal. From that dissatisfaction grew the field code of civil procedure in 1848, which was followed by the greater part of the American States in what was known as the reformed procedure. The influence of that code made the civil practice more simple even in the States which did not adopt it but continued with the common-law practice. The code was brief, simple, quite general in its terms, and it swept away a whole mass of technical details and conformed the practice of law to the customs and habits of thinking and acting of the American people. That is the true basis for procedure. The old common-law procedure was logical in a high degree, but man is not a logical animal. The American man especially is intensely practical and direct in his methods.

American procedure ought to follow as closely as possible the methods of thought and action of American farmers and business men and workmen. The law is made not for lawyers, but for their clients, and it ought to be administered, so far as possible, along the lines of laymen's understanding and mental processes. The best practice comes the nearest to what happens when two men agree to take a neighbor's decision in a dispute, and go to him and tell their stories and accept his judgment. Of course all practice can not be as simple as that, but that is the standard to which we ought to try to conform, rather than the methods of an acute, subtle, logical, finely discriminating, highly trained mind. It is that sort of thing which merchants seek when they get up committees of arbitration to decide their controversies without the intervention of lawyers. They are trying to get their questions settled in accordance with their instincts and habits of thought. That is the way in which all the great international arbitrations are conducted. Fortunately for them, the judicial procedures of the nations differ so widely that there can not be any particular rules of practice in an international case. Accordingly each country tells its story in print and then both go in and tell the arbitrators about it. Many of these cases are exceedingly complicated and difficult, but they require no complicated and difficult procedure.

During the sixty-odd years which have elapsed since the reform of American procedure by codification there has been a constant movement toward the same old condition of complex and technical procedure, caused by legislative interference with the details of practice. In many States, year by year, well-meaning lawyers have been putting new provisions into codes of procedure, expanding, elaborating, refining, telling how everything shall be done, how every step shall be taken, how every paper shall be framed, endeavoring to meet every difficulty encountered in individual practice by a new provision of law. The New York Code, as a horrible example, has been swelled in this way to more than eight times its original dimensions. Most of these enactments have been made in entire good faith. Many of them prescribe methods appropriate to secure or prevent the doing of particular things in the course of litigation, provided they are strictly and accurately followed. The general result, however, is that in all litigation in these jurisdictions we have a vast multitude of minute, detailed, technical rules that must be followed—traps to catch the unwary, barbed-wire entanglements, barriers which the subtle and adroit practitioner can interpose to hinder the pursuit of justice. Because these rules are statutory they create statutory rights. A multitude of controversies about these statutory rights intervene between the suitor's demand for redress and his final judgment. Rights created by statute can not be ignored by courts. Parties must be heard about them. The question upon them is not what accords with substantial justice in the particular case, but what the law has said shall be done in such proceedings. So the time of courts is occupied, delay is incurred, expense is increased. While the law is enforced, justice waits. The suitor who is right in his case may be wrong in his practice.

The courts are hindered in doing justice because they must follow the statute. There is a premium on shrewd, ingenious, shifty attorneys. The possibilities of delay and of forcing a compromise to avoid expense and annoyance induce litigation by those who wish to escape the faithful performance of their contracts. The calendars are crowded with such cases. In such a game the poor stand little chance against the rich, or the honest against the unscrupulous. The process of piling up more statutory rules continues in State legislatures. It has invaded Congress, and from many quarters efforts are coming to impose more and more specific rules upon the Federal courts. Such proposals are made by good lawyers and they are made in good faith, but they are made without due consideration of the fact that each one is a step in the course of a vicious policy which ought not to prevail. There is no necessity for all this bedevilment of our practice by law. A short and simple practice act in each jurisdiction—such as some States have already—laying down the general lines of procedure and leaving the rest to the courts is all that is necessary. The courts wish to do justice, and they will if they are permitted to. If rules are necessary, the courts will make them, and then the courts can see to it that they do not hinder justice. It is to be observed that the great lawyers in great causes concern themselves the least about technicalities. The small lawyers in the small cases are the worst, and that is just where the clients can least afford such methods.

There was intense opposition to the simplification of practice by the Field Code of 1848. Most of the old lawyers were violently against it. In my early days the leaders of the bar had all grown up under the common-law practice before the code and they despised and condemned the new ideas. Time and again I have heard them, in consultation with the author, describe the book as "your damned code, Mr. Field." But it is not the high priests of a mystery who determine whether it shall continue. It is the people who are either fooled by it or tired of it. They determined 70 years ago that practice should be simpler. And 25 years later the reform was followed in England by the judicature act of 1873. There is opposition to any improvement of our present system of practice in the direction of making it more simple. But the people of the country whose rights are being litigated will sooner or later find expression and guidance in bringing about again the same kind of reform which Mr. Field inaugurated in 1848.

There is one special field in which I think we can greatly reform ourselves. That is, in the application of our rules of evidence. I should not like to see broken down the carefully framed series of negations by which we seek to exclude from the knowledge of judges and jurors all testimony which does not conform to our conceptions of proper probative character, leaving the testimony in our courts to take the wide range that characterizes trials on the Continent of Europe; but there is no country in the world in which rules for the exclusion of evidence are applied with the rigidity and technicality obtaining in the United States. England and her colonies which follow the course of the common law have similar rules, but they are applied with a breadth and liberality in favor of getting at the truth not usually found in our courts. Our trial practice in the admission and exclusion of evidence does not agree with the common sense, the experience, or the instincts of any intelligent layman in the country. And as a consequence, while we are aiming to exclude matters which our rules declare to be incompetent or irrelevant or immaterial, we are frequently also excluding the truth. How common it is to see an unsophisticated witness on the stand trying to tell a true story about some event with which he is familiar and continually stopped and bewildered by objections based upon distinctions which do not exist in his mind at all, and finally leaving the stand with a feeling that he has been bottled up and not allowed to tell the truth. We apply these same rules with the same rigidity to women, whose minds work in an entirely different way from the mind of any lawyer who ever had anything to do with devising or developing the rules of evidence.

It is an exceedingly difficult thing to tell the truth, the whole truth, and nothing but the truth, on the witness stand, as any lawyer who has been a witness must realize; and the simplest and best way to get that done is to come as near as possible to allowing people to tell their stories their own way. When that is done the matters which have no proper probative effect can be disregarded. So far as my observation goes there are about 20 objections to the admission of evidence in a trial in an American court to one in an English court. The system of law is the same; the rules are the same. The difference is simply that we have got into a bad habit, and we ought to cure ourselves. It does not help a case any on the merits to be

so technical about evidence. On the contrary, it hurts the case with judges and juries, and it ought to do so because there is a fair implication that the lawyer who is so very particular about little points is not very confident in the merits of his case.

The rule against reversals except for causes which can be shown to have affected the decisions in the court below will have a salutary effect in this direction, and it has already had such an effect where it has been adopted. But even with such a rule our bad habits will continue unless we remind ourselves of them and try to break them.

I think there is a broader defect in our trial of causes in this, that we are too apt to play a game instead of trying to get down as rapidly as possible to the merits of the case. And we play the game for all it is worth. We enjoy the exercise of skill and the strategy and tactics of litigation. The lawyers on one side or the other of a large part of our litigations consider their duty to be to postpone to the latest time practicable a possible adverse result. So we make our lawsuits a game of chess where they are not a game of chance. Indeed, it is a most interesting and delightful game, but in the meantime the clients suffer. Unquestionably it would be best for all litigants, taken as a whole, and for the public whom we serve, if every lawyer should address himself with earnestness and sincerity to getting out the true facts of his case and getting the law applied to them as speedily and simply as possible. If we could all do that, we could beat Dick the Butcher and Jack Cade on their own heath. Perhaps a sound opinion of the bar may bring it about.

We must remember that if we are conscious of faults which perhaps are trivial among the lawyers who have the public spirit to become members of this association, those faults are sure to be more serious and injurious in those members of the bar who take but little interest in the public aspect of their profession; the lawyers who are in the lower grade as to attainment and cultivation; who are but little familiar with the traditions of the profession, and are having a hard time to get on with scanty business; the lawyers whose stock in trade is knowledge of the code and skill in the obstructive use of its provisions; the lawyers whose clients are found chiefly in that great class which seeks to prosper by doing injustice to others and uses the technicalities of the law to further that end. Among them there is always the danger that the necessities of the game will urge too far; that they will yield to the same influence which leads one man to strike below the belt, another to fire before the word, another to slip a card from the bottom of the pack. That danger is to be reached not by more legislation, but by the public opinion of the bar, open discussion of the ethics of the profession, active insistence upon standards of conduct.

We are in a period of universal development. All business, all science, all thought, are casting off old shackles and impediments and improving their methods, increasing their efficiency, lifting up their standards. It should not be that our noble profession is alone to remain stationary and without growth along the lines of better service and greater usefulness.

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